IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO. 1324 OF 2003
IN
SUIT NO. 1335 OF 1988

WITH
CHAMBER SUMMONS NO. 1325 OF 2003
IN
SUIT NO. 1335 OF 1988

WITH
CHAMBER SUMMONS NO. 276 OF 2004
IN
SUIT NO. 1335 OF 1988

WITH
CHAMBER SUMMONS NO. 1334 OF 2004
IN
SUIT NO. 1335 OF 1988

GIC Employees Sonal
Vihar Co-op Housing Soc. & Anr. .. Plaintiffs
V/.s]
Shri Pandurang H. Vaity
And Ors. .. Defendants

Mr. H.N. Thakore, i/b.M/s. Thakore Jariwala & Ass. in support of Ch/s.no. 1324/2003 and Ch/s. no. 1325/2003 for Plaintiffs.

Mr. D.D. Madon with Mr. A.C. Mahinkar in support of Ch/s. 276/2004 for Plaintiff no.2.

Mr. B.S. Shetty in support of Ch/s.1334/2004 for Applicant.

Mr. Bimal Bhabhda i/b. Apte & Co. for Defendant nos.1, 7, 11, 13, 19, 21, 23 to 26, 28 to 42 and 44 to 52.

Mr. Mahendra Rathod i/b. Kishor Dalal for Defendant no.53.

CORAM: S.J. VAZIFDAR, J.

DATE : 26TH OCTOBER, 2004.

P.C. :

1. The above Chamber Summons are disposed of by this Common order.

2. The suit was filed for specific performance of an agreement dated 28th April, 1980 entered into between Plaintiff no.2 and the Defendant. The case of the Plaintiffs in the suit as originally filed was that the agreement was entered into for the benefit of Plaintiff no.1. A separate agreement was entered into on 9th May, 1980 between the Plaintiff nos. 1 and 2.

3. The Chamber Summons No. 1324 of 2003 is taken out by Plaintiff no.1 for transposition of Plaintiff no.2 as a Defendant. Chamber summons No. 276 of 2004 is taken out by Plaintiff no.2 for

transposing Plaintiff no.1 as a Defendant. Chamber Summons No. 1325 of 2003 is taken out by Plaintiff no.1 for amendment of the Plaint by adding the Applicants in Chamber Summons no. 1334 of 2004 as party Defendants alongwith Plaintiff no.1. Chamber Summons No. 1334 of 2004 has been taken out by the Applicant who claims that the agreement entered into between Plaintiff no.2 and the Defendant is for the benefit of a partnership firm of which the remaining partners are Plaintiff no.2 and the Applicant.

4. The Applicant in Chamber Summons No. 1334 of 2004 seeks to be impleaded as a party Plaintiff.

5. After the aforesaid agreements were entered into and the suit was filed, disputes and differences arose between the Plaintiffs inter-se. The two Plaintiffs cannot conduct the suit as co-plaintiffs. It is necessary therefore without going into the merits of the matter and the disputes between the parties including those between the Plaintiffs, to protect the rights of all the parties. This is the limited purpose of the present order.

6. Mr. Thakore, the learned Counsel appearing

on behalf of Plaintiff no.1 contended that there were three reasons why Plaintiff no.2 and not Plaintiff no.1 ought to be transposed. He stated that the plaint was filed on the basis that the agreement between Plaintiff no.2 and the Defendant was entered into for the benefit of Plaintiff no.1. Secondly he stated that Plaintiff no.1 had paid the amounts due and payable in respect of the agreement. Lastly he stated that there were disputes between Plaintiff no.2 and the Applicant in Chamber Summons no. 1334 of 2004 which would jeopardise the effective prosecution of the suit.

7. However, the agreement of which specific performance is sought i.e. the agreement dated 28th April, 1980 was entered into between Plaintiff no.2 and the Defendant. It would be necessary therefore in the first instance for that agreement to be established. It would be convenient therefore to transpose Plaintiff no.1 and not Plaintiff no.2. However, while doing so, the rights of Plaintiff no.1 must be protected fully. This I have done in the order.

8. As far as Chamber summons No. 1334 of 2004

is concerned, the same is not maintainable. It is not open to a party to force himself as a Co-Plaintiff. If any authority is required for this proposition, a reference may be made to the case of Mustafa Shareef v. Asif Sharif reported in 1997 Mh.L.J. (NOC)-11 page 7. There is another reason why Chamber Summons No.1324 of 2004 is liable to be dismissed. An identical Chamber Summons bearing No. 1040 of 1998 taken out by the Applicant was dismissed by an order dated 15th July, 1999. For the latter reason Chamber Summons no. 1325 of 2003 is also liable to be dismissed. The disputes and differences between Plaintiff no.2 and the Applicant in Chamber Summons No. 1334 of 2004 are not related to the dispute in the present suit.

9. In the circumstances, Chamber Summons No. 1325 of 2003 and 1334 of 2004 are dismissed.

10. In Chamber Summons no. 1324 of 2003 and 276 of 2004 the following order is passed;

(i) Plaintiff no.1 is transposed as Defendant no.54.

(ii) Plaintiff no.2 shall not settle, compromise or withdraw the suit without giving atleast four weeks written notice of her intention to do so to Plaintiff no.1 and their advocates.

(iii) If Plaintiff no.2 withdraws or compromises the suit in any manner and for any reason whatsoever , Plaintiff no.1 shall without further orders be transposed as the Plaintiff.

(iv) It will be open to Plaintiff no.1 to continue even as a Defendant to take all steps, and urge all contentions in support of the decree sought. It is agreed between the parties that in the prayers the reference to Plaintiff no.1 shall now read as Defendant no.54 without a formal amendment to that effect.

(v) The disputes between the Applicants in Chamber Summons No. 1334 of 2004 and Plaintiff no.2 shall not affect the rights of

Plaintiff no.1 in any manner whatsoever.

(vi) All other contentions are kept open.

(vii) Amendment to be carried out within eight weeks from today.

SD/-

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